B. J. & R. Machine & Gear Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 7-CA-18382(1) and 7-CA-18643

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 3 September 1982 Administrative Law Judge William A. Pope II issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified.

The Respondent operates two plants at which it manufactures equipment for the aircraft and aerospace industries. As of October 1980,[2] one of the plants was unionized, the second was not. In early October, the Union advised the Respondent that an organizing campaign had commenced at the second plant and that employees Miller, Dontje, Redmon, and Baker were on the organizing committee. The Union lost the election held in November and filed objections. Subsequently, a second election was held in September 1981. The Union won and was certified.

The acts alleged as unfair labor practices in this proceeding occurred in October, November, and December. The judge found that the Respondent had violated Section 8(a)(1) by various statements made to employee Miller by Plant Superintendent Bachan in separate incidents in October and November, and that the Respondnt had violated Section 8(a)(3) by its layoff of Miller, Dontje, and Redmon in November and December. While we affirm the judge's finding that the Respondent through Bachan violated Section 8(a)(1) in November, we reverse his finding that the Respondent likewise violated Section 8(a)(1) in October. Nonetheless, we affirm his finding that the Respondent's November-December layoff of the three employees violated the Act.

The judge concluded that the Respondent, through Bachan, violated Section 8(a)(1) in October by interrogating employee Miller about his reasons for supporting the Union; by suggesting that Miller form an in-house committee to represent employees; by threatening the loss of life insurance benefits if the Union got in; and by threatening plant closure if the Union got in, and a strike ensued. This conclusion was based on the judge's crediting of Miller over Bachan concerning a conversation between the two in Bachan's office in October 1980.[3]

In discrediting Bachan's version of this conversation, the judge first found that Bachan's credibility hinged, in major part, on the "collective attitude" of the Respondent's management towards the "intrusion" of a union into its plant. He reasoned that, if management were truly neutral about unionization, Bachan would have had little reason to make the remarks attributed to him by Miller. Conversely, if management were opposed to a union, then Bachan would have had a motive for attempting to dissuade Miller from supporting the Union. The judge then concluded that the Respondent's president, Jakobi, had an "anti-union tilt," relying solely for that finding on Jakobi's testimony that he felt he could point out to employees the relative advantages and disadvantages of a union. The judge noted that Jakobi had instructed Bachan to advise employees of the Respondent's benefits and he concluded that Jakobi had authorized the Respondent's managers to speak against the need for a union. He then theorized that the real reason that Bachan had summoned Miller to his office was to dissuade him from supporting the Union and not, as Bachan had testified, to caution Miller about discussing union business when he was supposed to be working. Finding that this demonstrated Bachan's "lack of candor" about the purpose of the meeting, the judge found Bachan's testimony to be "less creditable" than Miller's and, as noted, he found the violations based on Miller's testimony. We conclude that the basis for this credibility resolution was faulty.

[1] In sec. II, par. 2, of his decision, the judge stated that employees Miller and Redmon were laid off on 22 November 1981, 10 days after the UAW lost the election held on 12 November 1981. The record reveals that each of these events occurred in 1980 rather 1981.

[2] Hereafter all dates referred to are 1980 unless stated otherwise.

[3] Member Zimmerman agrees with these findings and conclusions of the judge and would affirm them. He dissents from his colleagues' reversal of the 8(a)(1) findings of the judge and the credibility findings on which those findings were based. See his dissent in *Herbert F. Darling, Inc.*, 267 NLRB 476 (1983). Member Zimmerman notes that demeanor was a factor in the judge's credibility resolution and that Bachan's testimony corroborated portions of the testimony of Miller regarding the October meeting. He also notes that about a month later Bachan unlawfully threatened Miller with discipline because of his protected concerted activity, and that on 22 November 1980 the Respondent unlawfully terminated Miller. In the context of these other unfair labor practices directed against Miller, Member Zimmerman believes there is ample support for the judge to resolve credibility against Bachan on, inter alia, "the collective attitude of Respondent's management . . . towards the intrusion of a union into employer-employee relations within the Respondent's plants."

It is well established that the Board will not overrule an administrative law judge's credibility resolutions which are based on his observation of demeanor unless a clear preponderance of all of the relevant evidence convinces us that they are incorrect.[4] However, when an administrative law judge bases his credibility resolutions on factors other than his observations of the witnesses' demeanor, we may independently evaluate the witneses' credibility.[5] In the instant case, the credibility resolution as to the incident involving Miller and Bachan clearly was based on factors other than the judge's observations of demeanor.[6] It was, instead, premised on his conclusion that Bachan's credibility rested on management's "collective attitude" toward unionization which he found to have an "anti-union tilt" as allegedly demonstrated by the testimony of President Jakobi.

We reject the judge's basis for concluding that management had an "anti-union tilt," i.e., Jakobi's belief that he could advise his employees as to the relative merits of a union. Indeed, an employer has every right to deliver its message concerning its views about unions so long as it accomplishes this end in a noncoercive way. Thus, whatever Jakobi's beliefs about unionization, they do not, without more, aid in determining whether Bachan violated the Act as alleged. While Jakobi instructed Bachan to advise employees of the Respondent's benefits, this, without more, is insufficient to sustain the judge's conclusion that Bachan would engage in and in fact did engage in the unlawful discussion alleged in the complaint. Accordingly, we find that it was error for the judge to have inferred, without supporting evidence, a connection between the perceived "collective attitude" of management and what Bachan actually said. Moreover, while the judge asserted that Bachan had "concealed" the real purpose of the meeting, i.e., to discuss the Union, we note that Bachan admitted mentioning to Miller several features of the contract that the Respondent had at its unionized facility. Under these circumstances, we find insufficient evidence to establish that Bachan concealed the purpose of the meeting.

In sum, we are unable to accept the reasoning on which the judge based his decision to credit Miller over Bachan and we shall, therefore, independently analyze the record. Initially, we note that the General Counsel has the burden of establishing allegations by a preponderance of the evidence.[7] We find that he has failed to do so with respect to the allegations of 8(a)(1) violations occurring during Bachan's mid-October conversation with Miller. In this regard, we have determined that there is no basis in the record from which we could conclude that either Miller or Bachan is more credible as to the substance of the statements made during their October meeting. We note that the judge made no credibility resolutions in reaching his conclusion, with which we agree, that during a second conversation in mid-November the Respondent, through Bachan, violated Section 8(a)(1) by threatening to terminate Miller. Moreover, while we agree that the Respondent later laid off Miller for discriminatory reasons, we cannot attribute the animus evident in this action to Bachan so as to conclude that he likely made the unlawful statements attributed to him during the October incident. Thus, we note that it was the Respondent's manager of manufacturing, Mains, and not Bachan, who selected the employees to be laid off. And, while the Respondent's president, Jakobi, may have indicated an "anti-union tilt" by virtue of his testimony regarding the layoffs, we cannot on that basis alone find that Bachan made the illegal statements as ascribed to him in October. Accordingly, we shall dismiss these allegations on the grounds of failure of proof.

Despite our unwillingness to accept the judge's conclusion with respect to the 8(a)(1) allegations outlined above, we agree with his finding that the Respondent violated Section 8(a)(1) and (3) by laying off employees Miller, Redmon, and Dontje because of their union activities.[8]

Employees Miller, Redmon, and Dontje, known union activists and members of the Union's in-plant organizing committee, were laid off shortly after the Union lost the first election and while its objections to the elections were pending. The Respondent contended that these three employees were laid off as part of a larger economically motivated layoff caused by a decline in orders. The Respondent said that it lost a major customer which provided almost 50 percent of its business in early 1980. The Respondent did lay off some 16 employees during October, November, and December; however, it also hired 13 new employees during this period. The Respondent's president, Jakobi, initially contended during the investigation of the unfair labor practice charge that the alleged discriminatees were laid off because they were lowest in seniority within their specific departments. Subse-

[4] *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). *El Rancho Market*, 235 NLRB 468 (1978), enfd. 104 LRRM 2612 (9th Cir. 1979).

[5] *Colson Equipment*, 257 NLRB 78 (1981).

[6] Contrary to our dissenting colleague's contention, a close reading of the judge's decision clearly shows that demeanor was not a factor in the judge's analysis of this particular incident.

[7] *Delta Metals*, 236 NLRB 1665 (1978).

[8] Miller and Redmon were laid off on 22 November; Dontje was laid off on 5 December.

quently, Jakobi and the Respondent's manager of manufacturing, Mains, asserted that the Respondent considered additional factors, such as performance and attitude, in deciding which employees would be laid off. At the hearing, the Respondent attempted to establish that Miller, Redmon, and Dontje had performance and/or attendance problems.

The judge concluded that the Respondent laid off these three employees because of their union activities. He found that economic considerations had little, if anything, to do with the layoffs, and he discredited the Respondent's atempt to establish that the three were terminated for cause. He noted that the Respondent did not cite cause as a reason for the terminations at the time of the layoffs or during the investigation of the unfair labor practice charge, but raised it for the first time at the hearing.

In affirming the judge we note that the layoffs of the three known union activists occurred shortly after the Union lost the election and were pursuant to a layoff policy based in large part on subjective criteria. These factors, coupled with the Respondent's inconsistent explanations for selecting the alleged discriminatees for layoff, raise an inference that the Respondent laid them off to retaliate for their union activities and to thwart any renewed attempt to organize for the Union. The Respondent's proffered economic defense was insufficient to rebut this inference. We particularly note the inconsistency in the Respondent's hiring of new employees at a time when it claimed that declining orders mandated that employees be laid off. In the absence of some reasonable explanation as to this inconsistency, which the Respondent did not offer, we find the Respondent's defense unconvincing. Moreover, we note that while the Respondent claims to have lost a customer which supplied 50 percent of its business, the sales figures it submitted do not reflect a 50-percent drop in business. Accordingly, based on the foregoing, we find that the Respondent laid off Miller, Redmon, and Dontje because of their union activities and thereby violated Section 8(a)(1) and (3) of the Act.

ORDER

The National Labor Relations Board hereby orders that the Respondent, B. J. & R. Machine & Gear Company, Madison Heights, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with termination of employment because of their exercise of rights under Section 7 of the Act.

(b) Laying off or otherwise discriminating against any employee for supporting the International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW), or any other union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer David M. Miller, Janet M. Redmon, and Alan J. Dontje immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for their loss of earnings, with interest, in the manner set forth in the section of the judge's decision entitled the "Remedy."

(b) Expunge from its files any reference to the terminations of David M. Miller, Janet M. Redmon, and Alan J. Dontje, and notify each in writing that this has been done and that evidence of the unlawful terminations will not be used as a basis for future personnel action against them.

(c) Post at its plant in Madison Heights, Michigan, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with termination of employment because of their exercise of their rights under Section 7 of the Act.

WE WILL NOT lay off or in any other manner discriminate against employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer reinstatement, if not already provided, to David M. Miller, Janet M. Redmon, and Alan J. Dontje, to their former jobs or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of pay they may have suffered by reason of our discrimination against them with interest.

WE WILL expunge from our files any references to the terminations of David M. Miller, Janet M. Redmon, and Alan J. Dontje and WE WILL notify each that this has been done and that evidence of the unlawful termination will not be used as a basis for further personnel actions against them.

B. J. & R. MACHINE & GEAR COMPANY

DECISION

WILLIAM A. POPE II, Administrative Law Judge. A consolidated complaint, dated January 29, 1981, issued by the Regional Director for Region 7, alleges that the Respondent, B. J. & R. Machine & Gear Company (B. J. & R. or the Respondent), engaged in unfair labor practices, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, by threatening plant closure if a union organizing campaign was successful and the employees thereafter engaged in an economic strike; coercively interrogating employees concerning union affiliation; telling an employee that life insurance benefits would be reduced if the Union was successful in its organizing campaign; encouraging employees to select an employee committee in an effort to undermine support for the Union; threatening an employee with being "blackballed" because of union activities; and laying off its employees Janet M. Redmon, David M. Miller, and Alan J. Dontje because they had assisted and supported the Union. Trial was held before me on October 19 and 20, 1982, in Detroit, Michigan.

I. ISSUES

The issues in this case are:[1]

(1) Did the Respondent commit unfair labor practices, in violation of Section 8(a)(1) of the Act, by

(a) Threatening an employee with plant closure if the Charging Union was successful in its organizational campaign and the employees thereafter engaged in an economic strike in support of their collective-bargaining demands.

(b) Coercively interrogating an employee concerning his membership, support for, and activities on behalf of the Charging Union.

(c) Telling an employee that employees would receive smaller life insurance benefits if the Charging Union was successful in its organizational campaign.

(d) Informing employees that they could select an employee committee to meet with it concerning terms and conditions of employment in an attempt to undermine their support for the Charging Union.

(e) Threatening employees with being laid off and "blackballed" by the Respondent because of their activities on behalf of the Charging Union?

(2) Did the Respondent commit an unfair labor practice, in violation of Section 8(a)(1) and (3) of the Act, by laying off its employees David M. Miller, Janet M. Redmon, and Alan J. Dontje, because they had supported and assisted the Charging Union and engaged in concerted activities for mutual aid and protection?

The General Counsel argues that the testimony of its witnesses, who are more creditable than those of the Respondent, shows that the Respondent engaged in a pattern of unlawful statements, threats, predictions, and interrogation in order to intimidate and coerce its employees into not supporting an organizing campaign by the UAW in October and November 1980, all of which clearly demonstrated the Respondent's union animus. In the context of the Respondent's union animus, the General Counsel submits, the timing of the termination of the employment of three of four of the known union organizers shortly after the UAW was unsuccessful in the first election, together with inconsistent explanations for its actions, proves that the Respondent laid off David

[1] The Respondent stipulated that it has at all times material herein been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

Miller, Janet Redmon, and Alan Dontje because of their union activities.

The Respondent argues that it was not antagonistic toward the UAW, and that it is inherently implausible that an employer of its size would go to the extreme of "forcing 42 persons out of its employ from September 1, 1980, to December 5, 1980, in order to discriminate against three union activists of low seniority and varying skills, who were unavailable for other shifts or once laid off, did not call back, or return to offer themselves for employment." Citing a business downturn, the Respondent asserts that it was forced to lay off employees in October and November 1980, when reductions in its work force resulting from voluntary terminations and discharges were insufficient to reduce its payroll to May 1980 levels. Denying the General Counsel's claim that the "layoffs of the alleged discriminatees were pretextual," the Respondent contends that Miller, Redmon, and Dontje were merely three of a number of employees whom it laid off for economic reasons, and that it chose to lay them off because they were junior in seniority, lacking in experience, and were unqualified for other jobs. Arguing first that there were no improper statements made to its employees, as alleged in the complaint, the Respondent goes on to conclude that, even if there were one conversation violating Section 8(a)(1) involving only one union organizer, it was too isolated and remote to require a remedy. I disagree.

II. BACKGROUND

The Respondent, which operates two plants in the Detroit area, is engaged in the manufacture of gears, gear boxes, and assemblies, primarily for the aircraft and aerospace industries. Construction of its second plant, a 24,000-square-foot facility, was completed in the latter part of 1980. Bachan Aerospace, an affiliated company,[2] is engaged in the manufacture of aircraft parts and components. It operates a plant in the Detroit area located near the Respondent's plants, and a plant located in Windsor, Canada. Bachan Aerospace is a union employer, whose employees are represented by the UAW, the Charging Union in this case.

At the beginning of the trial, the parties stipulated as follows:

> That a petition in case number 7-RC-16096 was filed by the UAW on October 7, 1980, to represent Respondent's production and maintenance employees. Then an election was held on November 12, 1980; that the UAW filed objections to that election on November 18, 1980; that a hearing was held on December 16, 1980, pursuant to a notice of hearing issued December 4, 1980; and that that hearing resulted in the conducting of a second election on September 2nd, 1981; and that the UAW was thereafter certified as representative of Respondent's production and maintenance employees on September 11, 1981.

It was also stipulated that on October 7, 1980, the UAW notified the Respondent by letter that four of Respondent's employees, "Dave Miller, Alan Dontje, Jan Redman [sic], and Jim Baker," were members of the UAW organizing committee.

On November 22, 1981, some 10 days after the UAW lost the election held on November 12, 1981, David M. Miller and Janet M. Redmon, who were both employed in the Respondent's inspection department, were laid off.[3] On December 5, 1980, Alan J. Dontje, who was employed in the Respondent's grinding department, also was laid off.[4] Following the layoff, the three alleged discriminatees neither actively sought nor were they offered reinstatement by the Respondent.

III. FINDINGS AND CONCLUSIONS

A. *Threats*

The first issue in this case involves a series of statements allegedly made by Douglas Bachan, then superintendent of Respondent's Plant 2, to David M. Miller, one of the four union organizers identified in the UAW's letter of October 7, 1980, to the Respondent. Two questions must be answered to resolve this issue: First, did Bachan make the statements attributed to him; and second, even if he did, did the statements, or any one or more of them, violate the Act because they were threatening and intended to create an atmosphere of intimidation and coercion. On consideration of the testimony and demeanor of the witnesses, and the entire record, I find and conclude that both questions must be answered in the affirmative.

According to the testimony of David M. Miller, who was employed by the Respondent in Plant 2 from mid-August until late November 1980, as a first piece inspector, he was called to the office of Plant Superintendent Douglas Bachan on two occasions, once in mid-October and again in mid-November 1980, where he had conversations with Bachan related to the union organizing drive. On the first occasion, which took place before the union election, Bachan showed him a copy of the Bachan Aerospace union contract and asked him to read it, stating that he did not think it was a good idea to bring the Union into the plant. According to Miller, Bachan pointed out that both wages and life insurance benefits were lower under the Bachan Aerospace union contract, and said that if the Union were successful the Respondent's employees would lose life insurance benefits. Miller testified that Bachan also made the statement that, if the Union got in and there was a strike, he would close the plant and send the work to Canada. Miller said that Bachan asked him why he was on the organizing committee and, in response to Miller's answer that it was because of job security, stated that Miller's chances of being laid off were "about a million to one." Finally, according to Miller's testimony, Bachan suggested that Miller try to interest his fellow employees in organizing

[2] The two companies apparently have common stockholders and common management. Phillip Jakobi serves as president and chairman of both companies.

[3] David M. Miller was hired by the Respondent on August 18, 1980. Janet M. Redmon was hired on June 9, 1980.

[4] Alan J. Dontje was hired on April 21, 1980.

an in-plant committee which would negotiate problems with management, rather than bring in the Union.

On the second occasion, which occurred several days after the unsuccessful union election on November 12, 1980, Miller testified, Bachan said, "I'm getting sick and tired of hearing that I'm gonna be sued by the National Labor Relations Board." Bachan allegedly went on to say that he would fire anyone found discussing union business during working hours, and asked Miller, "[H]ow would you like to hear a rumor to the effect that you're gonna get laid off, and I'll blackball you no matter what expense, that you'll never get a job again?" According to Miller, he made no response because his "job was on the line."

Douglas Bachan, a stockholder in both the Respondent and Bachan Aerospace,[5] was the superintendent of Respondent's Plant 2 between September and December 1980. According to his testimony, sometime during the second week of October, after seeing a copy of the letter from the UAW listing the employees who were members of the UAW organizing committee, he called Miller to his office. Because Miller's name was on the list of union organizers, Bachan said, he wanted to make it clear to him that he should not talk about union matters when he was supposed to be working. Bachan acknowledged that he informed Miller of several of the features of the Bachan Aerospace union contract, but he denied threatening Miller with plant closure or suggesting the formation of an in-plant committee.[6] Bachan acknowledged, however, that on other occasions, in the course of discussions with one or more employees concerning employee communications with management, he had said that the employees could form an in-plant committee or go ahead and organize the Union.

According to Bachan, he was not interested in the views of the Respondent's employees on the union question. As he had with other employees, he only wanted to make sure that Miller understood the benefit package provided by the Respondent. When Miller volunteered that his reason for supporting the union was job security, Bachan replied that he did not believe that Miller needed to worry about job security at that time. Bachan testified that he also told Miller that a rumor he had heard, to the effect that the Union would get Respondent's employees a big pay increase, did not make sense in view of the fact that Bachan Aerospace, which was unionized, had a lower wage scale than the Respondent. Referring to the Respondent's life insurance program, Bachan said he told Miller that it was higher than that of Bachan Aerospace, and that he believed that the amount was going to be raised soon. In the course of the conversation, Bachan said, he showed Miller several daily shipping sheets, and told Miller that, as an inspector, his cooperation would help cure quality problems which the plant was experiencing, and that in that way he could play a part in the plant meeting production requirements and keeping everybody employed.

After the union election on November 12, 1980, Bachan testified, he called Miller to his office for disciplinary reasons.[7] According to information which Bachan said he had received from Mike Brzoska, Miller's immediate supervisor, Miller was responsible for circulating a rumor that the National Labor Relations Board and the UAW were suing him and that "they were gonna fix my whatever."[8] When confronted with the rumor, Miller admitted having made such a statement to Brzoska, but only for the purpose of upsetting Brzoska, whom Miller referred to as an eavesdropper. According to Bachan, he told Miller he should fire him, and he admonished Miller not to say anything like that again or he would be fired. Apparently as an object lesson, according to Bachan, he asked Miller how he would like it if he heard rumors that Bachan was out to get him. Bachan did not acknowledge threatening to fire anyone discussing union business during working hours, or using the word "blackball." Bachan repeated several times during his testimony that he had no complaints concerning Miller's overall job performance.

There are clearly many similarities to be found in the testimony of Bachan and Miller concerning the two meetings in Bachan's office. It is undisputed, for example, that during the first meeting, Bachan told Miller not to worry about being laid off, and he compared the wage scale and insurance benefits of the Respondent and Bachan Aerospace, indicating that the Respondent's benefits were superior.[9] And, during the second meeting, Bachan admitted, he asked Miller how he would like it if he heard a rumor that Bachan was out to get him. The difference is whether Bachan's statements, in context, were threatening, coercive, and intimidating, and whether Bachan interrogated Miller and threatened him with being blackballed or laid off because of his support for the Union, threatened the Respondent's employees with possible plant closure and loss of insurance benefits if the Union won the election, and suggested that Miller form an in-house employee committee to negotiate with management.

The issue here is one of credibility, that is, whose testimony should be believed, that of David Miller or that of Douglas Bachan? Bachan's credibility as a witness hinges in major part upon the collective attitude of the Respondent's management, of which he was member, toward the intrusion of a union into employer-employee relations within the Respondent's plants. If, as professed

[5] Douglas Bachan's father was the founder of Bachan Aerospace and a partner in and former chairman of the board of B. J. & R. Machine & Gear Company.

[6] Bachan testified that he was told by Phillip Jakobi, the Respondent's president and chairman, that management was within its rights to make sure that the Respondent's employees understood the benefits which they already had. Jakobi's instructions were to say nothing false about the Respondent's benefits.

[7] When questioned about the seeming inconsistency in his affidavit of January 9, 1981, in which Bachan said he had had only one conversation with Miller, Bachan explained that he did not consider the rumor incident to have been a conversation but, rather, an occasion when he talked to Miller as "boss to an employee."

[8] Michael Brzoska, inspection leader, confirmed that Miller had told him about a suit against Bachan by the NLRB and the UAW. Brzoska also testified that on a later occasion Miller said "that he like to 'rile' me up, he liked to get me going." David Miller, on the other hand, testified that he did not recall telling Brzoska that he like to "rile" him.

[9] From the record it appears that the Respondent may have had higher wage scales and higher life insurance benefits than Bachan Aerospace, in some instances.

by Bachan, Phillip Jakobi, the Respondent's president and chairman of the board, and Lawrence Mains, then the Respondent's superintendent of manufacturing, management was truly neutral, there would have been little reason for Bachan to have made the disputed remarks attributed to him by Miller. Conversely, if management opposed the idea of a union representing the Respondent's employees, Bachan would have had a motive for attempting to dissuade Miller from supporting the union organizing campaign.

The evidence in this case clearly points to the conclusion that the Respondent's management was not neutral and did not follow a policy of noninterference with respect to the union organizing campaign. That the Respondent was basically opposed to the union is implicit in the testimony of B. J. & R. President Phillip Jakobi, who testified that while it was his policy not to interfere with his employees' desire for a union, he felt that he could point out advantages and disadvantages. That would not necessarily violate the Act, of course, but pointing out advantages and disadvantages is incompatible with a policy of noninterference, such as Jakobi also claimed to follow, since the very act of framing and expressing his perception of advantages and disadvantages, which are inherently subjective, would constitute at least a subtle effort to shape the listener's views. That President Jakobi considered the disadvantages of a union to outweigh the advantages, reflecting an antiunion tilt, is apparent from the instructions which Bachan acknowledged having received from him, which were to make sure the employees understood the benefits which the Respondent already provided, without saying anything that was false. Thus, even if no more specific instructions were given by President Jakobi to his subordinates, including Douglas Bachan, it is clear that the Respondent's managers were authorized by the company president to speak out against the need for a union.

In that context, it is clear that Bachan's principal purpose in calling Miller to his office soon after he received a copy of the Union's letter to President Jakobi listing the employees who were on the union organizing committee, which, of course, included Miller, was to attempt to dissuade Miller from supporting the Union. Bachan's stated purpose, that of cautioning Miller not to discuss union business when he was supposed to be working, was nothing more than a pretext, the more obviously so because Bachan apparently did not find it necessary to call any of the other three organizers to his office for similar cautionary instructions.[10] Even more revealing of his real purpose, after cautioning Miller in a perfunctory manner, Bachan required Miller, who was on company time and somewhat in the position of a captive audience, to listen to what amounted to an unsolicited lecture on Bachan's views concerning the benefits enjoyed by the Respondent's employees and the absence of a need for a union.

[10] Even if the instructions given by Bachan to Miller were not unlawful, the manner in which they were given, by singling out one union supporter to receive such instructions, amounts to discriminatory treatment which violates Sec. 8(a)(1). *Carolina Steel Corp.*, 225 NLRB 20 (1976).

Because of Bachan's lack of candor concerning the real purpose for which he called Miller to his office before the union election, I conclude that his testimony concerning what was said during that meeting is less creditable than that of David Miller. That being so, I find that on the occasion of his meeting with Miller before the union election, Bachan exceeded the admonition given to him by President Jakobi to limit his remarks to factually accurate statements about the Company's benefits, and made the statements attributed to him by Miller. Specifically, I credit Miller's testimony and find that, on that occasion, Bachan made statements to the effect that, if the Union got in, the employees would lose life insurance benefits, and that, if there were a strike, he would close the plant and send the work to Canada. Further, I find that Bachan used the occasion to interrogate Miller concerning his reasons for supporting the Union, and suggested that Miller take the lead in forming an in-house committee to represent the employees in negotiations with management.

Having found that Bachan made the statements alleged in the complaint and described above, the remaining question is whether or not they constituted unfair labor practices within the meaning of Section 8(a)(1) of the Act. I find that they did.

Although the allegedly unlawful statements were made to one employee during a single meeting with the plant superintendent, I find that they were not an insolated or insignificant incident, that might arguably require no remedy. Even in the absence of evidence of record indicating that there were similar incidents involving other employees, I find that Bachan's remarks, made in his capacity as a high-level management official, which were directed to one of the four employee union organizers, constituted a coercive attempt by the Respondent to interfere with its employees' rights, as guaranteed by Section 7 of the Act, to engage in self-organizational activities.

Bachan's interrogation of Miller concerning the latter's reasons for supporting the union organizational drive placed Miller in the position of having to justify his actions to his Employer, which clearly tended to have an intimidating and inhibiting effect on Miller's free excercise of his Section 7 rights, in violation of Section 8(a)(1) of the Act. *Florida Steel Corp.*, 215 NLRB 97 (1974); *Crown Zellerbach Corp.*, 225 NLRB 911 (1976). Similarly violative of Section 8(a)(1) were Bachan's statements that the employees would lose life insurance under a union contract, and that he would close the plant and send the work to Canada if there were a strike. The intimidating and coercive effect of such statements which clearly threatened more onerous working conditions and loss of jobs in the event of union organization is obvious. *Alside Supply Co.*, 219 NLRB 447 (1975); *Sportspal, Inc.*, 214 NLRB 917 (1974); *Adams Automation Co.*, 218 NLRB 1255 (1975). Also obvious is the restraining effect of an employer's suggestion, as that made by Bachan to Miller, that its employees bypass a union and form an in-house workers' committee to negotiate with management. *Womac Industries*, 238 NLRB 43 (1978).

Further violative of the Act were the statements made by Bachan to Miller during the postelection meeting initiated by Bachan and held in his office several days after the November 12, 1980 election. In substance, on that occasion Bachan warned Miller not to continue saying that Bachan was being sued by the National Labor Relations Board and the Union, and he asked Miller how the latter would like it if he heard that Bachan was out to get him. While Bachan and Miller are not in accord as to everything that was said,[11] they agreed on the substance and I find it unnecessary to resolve any remaining questions as to what was said because the outcome would not change my finding that Bachan's statements threatened Miller for engaging in a protected concerted activity. It is incorrect to characterize Miller's statements, which he did not deny, to his foreman, Michael Brzoska, concerning a suit against Bachan, as mere rumors. While it might not have been technically correct to say there was a suit pending against Bachan at that moment, an unfair labor charge had been filed against the Respondent in Case 7–CA–18383(1) on October 14, 1980, and that is a sufficient basis to support the conclusion of Miller, a layman, that the NLRB and the UAW were suing Bachan. Since the statement clearly related to the efforts of the Respondent's employees to exercise their rights to organize, as guaranteed by Section 7 of the Act, it was a protected concerted activity. Bachan's attempt to silence Miller by intimidation, and his threat, whether actual or implied, to discipline Miller if he repeated the statement, constituted improper interference with Miller's right to engage in protected activities and therefore violated Section 8(a)(1).

b. *Layoffs*

The remaining issue concerns the circumstances under which the Respondent terminated the employment of David M. Miller, Janet M. Redmon, and Alan J. Dontje, three of the four employees named by the UAW members of the UAW organizing committee in the Respondent's plant.[12] On consideration and demeanor of all of the witnesses, I find that the evidence shows that the Respondent terminated the employment of the three employees in question in retaliation for their union sentiments and union organizing activities. I do not credit, and therefore reject, the Respondent's claim that the three employees were laid off in the ordinary course of business, and their membership in the UAW organizing committee and their union organizing activities were coincidental and had no bearing on the decision to terminate their employment.

The proximity in time of the layoffs[13] to the UAW's loss of the November 10, 1980 election and the filing of objections by the Union on November 18, 1980, raises the strong inference that the Respondent acted swiftly to terminate the employment of the employees identified as leaders of the recent unsuccessful union organizing campaign, and to undermine future effective leadership of any subsequent renewed organizing activity. From management's point of view there would be obvious benefits flowing from the quick elimination of the employees who had disturbed the status quo by fomenting worker unrest, and a parallel desirable effect of discouraging other employees from overtly participating in any future union organizing campaigns by making an example of those who had been leaders of the recent unsuccessful campaign.

Left unrebutted, the Respondent's prompt termination of the employment of the three named union organizers following the UAW's unsuccessful attempt to organize the Respondent's employees is sufficiently strong circumstantial evidence of violation of the three employees' rights under Section 7 of the Act to meet the General Counsel's burden of proving the alleged violations of Section 8(a)(3) and (1) of the Act. The Respondent has attempted to rebut the adverse inference, however, by testimony from its president, Phillip Jakobi, and then Manager of Manufacturing Lawrence Mains, who maintained that adverse economic conditions necessitated layoffs in late 1980, and denied that Miller, Redmon, and Dontje were laid off because of their union organizing activities. I do not find Jakobi's testimony on these points to be creditable, however, because his explanation of the Respondent's layoff policies changed repeatedly as more facts became known which were inconsistent with his earlier explanations. Nor, in view of Jakobi's lack of candor, do I credit the denial by Lawrence Mains, his subordinate, that union activity was a factor in the layoffs of Miller, Redmon, and Dontje.

Initially, Jakobi, by letter dated December 29, 1980, stated that the three employees in question were laid off because they were the lowest in seniority within their specific department. When it became apparent after presentation of the General Counsel's direct case that the statement was not true, at least with respect to Redmon and Dontje,[14] Jakobi testified for the Respondent on direct examination that, when layoffs were necessary, employees were laid off as close as possible to seniority

[11] Bachan, for example, did not admit to having made the remarks attributed to him by Miller to the effect that he ought to fire Miller, and would do so if Miller continued to spread the so-called rumor, and that he would fire anyone caught discussing union business during working hours. Miller, on the other hand, did not admit to having said that he made the statements in questions to upset his supervisor, Mike Brzoska.

[12] The Respondent also terminated the employment of the fourth named member of the UAW organizing committee, Jim Baker; however, the circumstances of the termination of his employment have not been raised as an issue in this proceeding.

[13] David M. Miller and Janet M. Redmon were laid off on November 22, 1980; Alan J. Dontje was laid off on December 5, 1980.

[14] In greater detail, the Respondent's posthearing exhibit, which is admitted into evidence as post-hearing Exh. 1, shows that at the time Redmon, a trainee working on the day shift in the inspection department, was laid off on November 22, 1980, Charlene R. Silverthrone, a trainee working in the same department on the night shift, had less seniority. The same exhibit shows that at the time Dontje was laid off on December 5, 1980, there were seven other employees in his department, the grinding department, who had less seniority, although only one had the same classification, Class C, as held by Dontje. Five of the less senior employees were in Class B, and one was in Class A. The shifts and classification of employees are insignificant, at this point, however, because in his letter Jakobi made no reference to seniority within shifts or classifications, but only to seniority within the departments.

and classification,[15] with little transferring of people between shifts, in order to follow as closely as possible the procedures contained in the Bachan Aerospace union contract. On cross-examination, Jakobi restated the Respondent's layoff policy, but added additional factors: "But the policy is pretty much based on trainees are laid off first, it is based on performance, it is based on attendance, it is based on a lot of things. It is based on the level of—the classification, and it's by department."[16]

Lawrence Mains testified that, as manager of manufacturing in late 1980, he was told by President Jakobi to reduce the payroll by a certain amount, and that he and Helmut Schmitz made the decision to lay off 13 or 14 employees. In doing so, according to Mains, he considered seniority, capabilities, attendance, and attitudes, with seniority being given a little more, but not much, weight. With respect to Miller and Redmon, Mains said he and Schmitz decided they would be laid off because they were very low on seniority, and he "had been getting feedbacks from the shop as to their attendance, their capabilities, their attitudes."[17] Mains said he could not recall if there were employees with less seniority than they had, but there might have been one. Dontje was laid off because the crush grinder machine which he had operated had been removed from the plant and there was no other machine which he was qualified to operate, and there had been criticism of his attendance. Mains said that he believed there was one other employee in Dontje's department who had less seniority. Mains acknowledged that other employees had been laid off out of seniority order.

Thus, while the Respondent has steadfastly maintained that the layoffs of Miller, Redmon, and Dontje were but three of a number of layoffs[18] necessitated by adverse economic conditions, its explanation of its layoff policy and how the three employees in question were selected for layoff has been anything but consistent. It is apparent from the testimony of Lawrence Mains that, contrary to the claim of the Respondent's president Phillip Jakobi, the Respondent did not follow a layoff policy based on seniority, whether within departments, by classification, or by shift. Corroborating Mains' testimony that seniority was but one of four factors, and not necessarily the determining one, the Respondent's Posthearing Exhibit 1 shows that 4 of 17 employees, including Alan Dontje, who were laid off between September 1, 1980, and December 31, 1980, were not the least senior by classification and shift. Further, of the 17 employees laid off, 7 were not the least senior employees considering other employees in their department on the same shifts, with lower classifications, and 8 had more seniority than other employees in the same department, with the same or lower classifications, but working on the other shift. And, finally, seven employees, in Class C or higher, were laid off before trainees in their departments.

As noted, the Respondent maintains that the layoff of Miller, Redmon, and Dontje, who were but three of a number of employees laid off about the same time, was necessitated by declining orders and lack of work. While it may be true that Respondent experienced a loss of business in late 1980, its claim that it was forced to resort to layoffs to reduce its payroll costs does not stand up well under scrutiny. The Respondent's Posthearing Exhibit 1 shows that during the period from January 1, 1980, to October 22, 1981, the Respondent experienced a turnover of over 200 employees (at least 21 by layoff, 106 by quitting, and 81 by discharge, for a total of 208), among a work force which apparently fluctuated between approximately 100 and 150 employees. With a turnover rate of such proportions (even excluding layoffs, which account for only approximately 10 percent of the employee departures), it would seem that the Respondent could have accomplished its goal of reducing its work force by a combination of attrition, and a moratorium on hiring, coupled with reassignments within the work force, without the necessity of resorting to layoffs. This conclusion is even more evident when it is considered that during the months of October, November, and December 1980, when 16 employees were laid off, the work force was concurrently increased by 13 new hires, resulting in a net reduction of only 3 employees. On its face, the hiring of new employees at the same time other employees are being laid off suggests, at the very least, that the Respondent's claim of economic necessity has been greatly exaggerated.

It is clear from the evidence in this case that the Respondent had no uniform established layoff policy. To the contrary, the decision to lay off an employee was routinely made in secret by management on the basis of subjective criteria which had more to do with management's perception of the employee's value to the Company than any objective standard, such as seniority. Indeed, the evidence in this case most strongly suggests that layoffs, as employed by the Respondent, had little, if anything, to do with economic considerations but, rather, were simply another personnel management tool used by the Respondent to eliminate employees whom, for whatever reason, it considered to be nonproductive or troublesome, but where actual cause for dismissal was apparently lacking.[19]

[15] R. Posthearing Exh. 1 lists employees by classification: Leader, Class A, Class B, Class C, and Trainee. Jakobi testified that the Respondent's employees, other than trainees, were not told how they were classified, although that information was provided to employees of Bachan Aerospace.

[16] Jakobi denied that he played any role in selecting employees to be laid off, stating that he merely told his staff to reduce payroll costs, and that the decisions to lay off specific employees were made by the staff, including, Bob Rients in inspection, and Helmut Schmitz and Larry Mains in machines.

[17] This contrasts sharply with the testimony of Douglas Bachan, who acknowledged that in early October 1980 he told Miller that, based on his job performance, the latter did not have to worry about job security.

[18] R. hearing Exh. 1 shows that the employment of approximately 50 employees was terminated between September 1, 1980, and December 31, 1980, 17 by layoff, 24 by quitting, and 9 by discharge.

[19] As an example, Class A employee William W. Terry, N/C lathe department, was laid off on October 7, 1980, and replaced by a newly hired, but lower paid, Class A employee (Dale G. Zitz) on October 20, 1980, some 13 days later. While the record is silent as to further details concerning this occurrence, it is difficult, indeed, to believe that the Respondent's business was so volatile that an economic downturn which forced the layoff of an employee could have been so reversed a mere 13 days later that a new employee of the same skill level had to be hired.

In a belated attempt to further justify its actions in laying off Miller, Redmon, and Dontje, during the trial of this case the Respondent introduced evidence which it contends show that all three had job performance problems and, in the case of Redmon and Dontje, attendance problems as well. Even assuming there may have been some basis for such claims, a finding which I specifically decline to make on the basis of this record, the Respondent's failure to cite good cause as a reason for the discharge of the three employees either at the time their employment was terminated, or during the investigation of the unfair labor practice charge, discredits the Respondent's belated contention at this stage of the proceeding that good cause for discharge was a factor in its decision to terminate the employment of Miller, Redmon, or Dontje.

The one remaining thing which distinguished these three employees from their fellow employees, and brought them to management's attention, was, of course, their membership on the UAW organizing committee. For reasons previously stated, management was not neutral with respect to the UAW's attempt to organize the Respondent's employees, and Miller, at least, was subjected to harassment, threats, and intimidation by his plant superintendent because of his union activities. It is clear that the Respondent opposed the idea of union representation of its employees, and that soon after the UAW was rejected by the employees in the election on November 18, 1980, it took steps to weaken, if not end, the union organizing movement by terminating the employment of the members of the UAW organizing committee. Economic necessity as reason for laying off Miller, Redmon, and Dontje was nothing more than a pretext raised by Respondent to conceal its real objective, which was to discharge the three employees because of their union activities. The Respondent's actions in doing so constitute a clear violation of Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent committed unfair labor practices in October 1980 by

(a) Threatening an employee with plant closure if the Charging Union were successful in its organizational campaign and the employees thereafter engaged in an economic strike in support of their collective-bargaining demands, in violation of Section 8(a)(1) of the Act.

(b) Coercively interrogating an employee concerning his membership in, support for, and activities on behalf of the Charging Union, in violation of Section 8(a)(1) of the Act.

(c) Telling an employee that the Respondent's employees would receive smaller life insurance benefits if the Charging Union were successful in its organizational campaign in violation of Section 8(a)(1) of the Act.

(d) Suggesting to an employee that he form an employee committee for the purpose of meeting with management to discuss terms and conditions of employment, in lieu of a union, in violation of Section 8(a)(1) of the Act.

3. The Respondent committed an unfair labor practice in November 1980 by threatening an employee with loss of employment if he engaged in the protected concerted activity of talking about charges filed against the Respondent by the Charging Union or complaints filed or to be filed against the Respondent by the General Counsel of the National Labor Relations Board, in violation of Section 8(a)(1) of the Act.

4. The Respondent committed unfair labor practices on or about November 22, 1981, by terminating the employment of its employees David M. Miller and Janet M. Redmon and on or about December 5, 1980, by terminating the employment of its employee Alan J. Dontje, becaue of their support and activities on behalf of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, in violation of Section 8(a)(3) and (1) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find it appropriate to order the Respondent to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having committed unfair labor practices by unlawfully discharging their employees David M. Miller, Janet M. Redmon, and Alan J. Dontje, shall offer to reinstate them to their former employment, without prejudice to any rights or privileges, and make them whole for any loss of earnings they may have sustained as a result of the termination of their employment. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977); see generally *Isis Plumbing Co.*, 138 NLRB 716, 717–721 (1962).

[Recommended Order omitted from publication.]